

अण्डमान तथा
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निकोबार राजपत्र
Nicobar Gazette

असाधारण

EXTRAORDINARY

प्राधिकार से प्रकाशित

Published by Authority

सं. 138, पोर्ट ब्लेयर, मंगलवार, 12 जून, 2007

No. 138, Port Blair, Tuesday, June 12, 2007

अण्डमान तथा निकोबार प्रशासन

ANDAMAN AND NICOBAR ADMINISTRATION

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NOTIFICATION

Port Blair, dated the 12th June, 2007.

No.130/07/F.No. 3-288/2001-Labour.—In pursuance of sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Act No. 14 of 1947) read with Notification No. LR-1(59)/55 dated 13th December, 1955 of the Govt. of India, Ministry of Labour, the Lieutenant Governor, Andaman and Nicobar Islands hereby orders for publishing the following Award given by the Labour Court, Andaman and Nicobar Islands, Port Blair in the matter of an Industrial Dispute between the Pradhan, Gram Panchayat Sivapuram and workman Shri R. Madanan, Ex-Daily Rated Peon over alleged termination of his service, for adjudication vide Administration's Notification No. 3-288-2003-Labour dated 05/08/2002.

**IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT
ANDAMAN & NICOBAR ISLANDS
PORT BLAIR**

Presents : Shri N.K. Ghosal, Presiding Officer, Labour Court

I.D. Case No. 20 of 2002

R. Madanan

..... First Party Workman.

Versus

**The Pradhan,
Gram Panchayat, Sivapuram**

..... Second Party.

Friday, the 16th March, 2007.

AWARD

1. The present schedule reference under sub-section (1) and sub-section (2A) of section 10 read with the sub-section (5) of section 12 of the Industrial Disputes Act, 1947 (Act No. 14 of 1947) was made to this Labour Court by the Lt. Governor, A&N Islands for adjudication. At the time of making the reference the referring authority was satisfied that an Industrial Dispute exists in between the Pradhan, Gram Panchayat, Sivapuram and the workman Shri R. Madanan and the reference was made for adjudication of the following dispute:-

- (1) Is the Gram Panchayat an Industry within the meaning of section 2 (1) of the Industrial Disputes Act, 1947 ?

- (2) Whether the Pradhan, Gram Panchayat, who is an elected member for a fixed tenure, is competent to appoint the Daily Rated Mazdoor, Daily Rated Typist without prior approval of the Director/Secretary of Panchayat ?
- (3) Whether Pradhan/Panchayat Secretary is covered under the definition of employer defined under section 2 (g) of the I.D. Act, 1947 ?
- (4) Whether the appointments in question were made as per rule and were proper and legal ?
- (5) Whether the employment of
- (6) Shri R. Madanan as Daily Rated Peon in the Sivapuram Gram Panchayat is an employment in an Industry as per the I.D. Act, 1947 ?
- (7) If so, whether the demand of Shri R. Madanan, Ex-Daily Rated Peon for his reinstatement in regular scale of pay with back wages against the termination of his services by the Office of the Pradhan/Panchayat Secretary, Sivapuram Gram Panchayat is legal and justified ? if so, what relief, the workman an is entitled to ?

2. On receipt of the reference notices were served upon both the parties. The first party appeared and filed a statement of demand. In spite of due service of notices, the second party did not appear to assist the court in the matter of adjudication of the dispute. The case, therefore, came up for exparte hearing.

3. In the statement of claim the first party workman contended, inter alia, that he was engaged as Temporary Peon under the second party on and from 1.8.1995 and he continued as such till 28.2.2001, on and from which day he was terminated vide office order No. 1-4/GP/SP/2k1/40. He was discharging the duties and responsibilities of a regular peon from the date of his initial appointment. The first party workman thereafter approached the Assistant Labour Commissioner, who initiated a conciliation proceeding which ultimately ended in failure and the appropriate government has made the present reference for adjudication.

The first party stated that the Gram Panchayat is an Industry within the meaning of section 2(j) of the Industrial Dispute Act and that the Pradhan is competent to appoint a daily rated employee without prior approval of the Director or Secretary concerned. He stated further that as he has completed more than 240 days of continuous services and has worked for more than 5 years under the second party, he is entitled to be reinstated in service as a regular peon. There existed a clear vacancy of peon on regular basis under the second party when the order of termination was issued. The first party possesses all the requisite qualification and fulfills all eligibility criteria for appointment as peon on regular basis. The first party, therefore, prays for an award setting aside the order of termination and directing the second party to reinstate the first party as peon on regular scale of pay against the existing vacancy with all back wages and other service benefits. He also prayed for a direction upon the second party to pay to him the difference of pay he had already drawn and the pay to be calculated on regular scale of pay.

4. I have already mentioned that the second party has not participated to assist the court in the present proceeding for the reasons known to him. Be that as it may, let me now proceed to dispose of the issues raised in the schedule of reference.

DECISION WITH REASONS

5. At the very outset it is to be mentioned that the schedule No. 1 appended to the reference has been wrongly described by mentioning incorrect section of law. "Industry" has been defined in section 2(j) of the Industrial Disputes Act, 1947 to mean, "any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft, or industrial occupation or avocation of workmen. The definition "Industry" has a wide connotation. "Industry" as inserted in section 2(j) of the Industrial Disputes act, 1947 (as enacted by Act 46 of 1982 with effect from 21.8.1984) reads thus—

"Any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not,

- (i) any capital has been invested for the purpose of carrying on such activity; or
- (ii) such activity is carried on with a motive to make any gain or profit, and includes-
 - (a) xx xx xx xx

6. The powers duties and functions of the Gram Panchayat has been enumerated in chapter IV of the Andaman & Nicobar Islands (Panchayats) Regulation, 1994. The Gram Panchayat shall function as an institution of self government in respect of the preparation of plans for economic and social justice. Supply of water for domestic use and for cattle; construction and cleaning of public roads, drains, ponds tanks and wells, sanitation, conservancy, the prevention and abatement of nuisance, preservation and improvement of public health, establishing and maintaining public hospitals and dispensaries providing public relief; regulation by licensing or otherwise of tea, coffee and milk shops; provision, maintenance and regulation of burning; ensuring systematic disposal of carcasses, provision of definite place for the purpose and other means for the disposal of unclaimed corpses and carcasses; construction and maintenance of public latrines; taking of measures to prevent the outbreak, spread and recurrence of any infectious disease; reclaiming of unhealthy localities; removal of rubbish heaps, jungle growth, the filling in of disused wells, insanitary ponds, pools, ditches, pits or Hollows, the prevention of water-logging in irrigated areas and other improvements of sanitary conditions; maternity and child welfare; the encouragement of human and animal vaccination; the provision and maintenance of compost pits; and many other matters are some of the functions of the Gram Panchayat in the sphere of sanitation and health. Removing of obstructions and projections in public streets or places and in sites, not being private property, which are open to the public; construction, maintenance and repair of public roads, drains, bunds and bridges; maintenance and regulation of the use of buildings handed over to the Panchayat; lighting of the village; and many other functions are some of the functions of the Gram Panchayat in the sphere of public works. Self defence and village defence, planning and administration, community development, agriculture, preservation of forests and pasture lands, animal husbandry are also functions of the Gram Panchayat. These activities carried on by the Gram Panchayat cannot be excluded from the definition of "systematic activities" coming within the scope of 'industry as defined in section 2(j) of the Act. This aspect has been elaborately discussed by the Hon'ble Apex Court in the case of Bangalore Water Supply and Sewerage Board – vs – A. Rajappa reported in AIR 1978 SC 548. The second party has not come forward with any sort of claim to satisfy the court that Gram Panchayat is not an industry. Having considered all these aspects, I am of the opinion that the Gram Panchayat is an 'industry' within the meaning of section 2(j) of the Industrial Disputes Act, 1947.

7. The First party had been working in the Gram Panchayat as a Peon. The nature of his duties cannot be in a managerial, supervisory or administrative capacity. The nature of work a Peon is required to discharge does not need any special skill. He is a menial or unskilled staff. When the Gram Panchayat, where the first Party is discharging the menial duties, is held to be an 'industry', we can safely conclude, in the absence of any material on the contrary, that the first party is a 'workman' within the meaning of section 2(s) of the Industrial Disputes Act.

8. I now proceed to examine the scheduled reference Nos. 2, 3, 4, 5 and 6.

9. The first party, in support of his statement of claim, has examined himself as P.W.I. His unchallenged testimony goes to establish that he was appointed as Peon by the second party on 1.8.1995 on a daily wage of Rs. 50/- per day. He continued as such for five years and from time to time his daily wage was enhanced. Ultimately he was terminated from service on and from 28.2.2002. He further stated that his co-employee Subiya Ram was also terminated on the same day, but he was reinstated in service, but the first party's prayer for reinstatement was refused. He further stated that subsequently one Shamji was appointed in his place and he is now continuing in service.

10. The first party workman has filed a copy of his order of appointment, copy of order of termination and a copy of the report of the Conciliation Officer which are Annexure A, B and C to the statement of claim. Annexure-A shows that the first party was appointed as Peon with effect from 1.8.1995. Annexure B shows that he was terminated from service with effect from 28.2.2001. The views of the second party before the Conciliation Officer as it appears from the failure report, is as follows:-

"The Secretary, Gram Panchayat on behalf of the Pradhan has stated that Shri R. Madanan appointed as Peon on daily wages after being approved a proposal of his appointment by the Gram Sabha meeting. He stated that the Pradhan is the view to not reinstate him permanently, but can be appointed only for three months subject to approval of Director of Panchayat. He demanded that he should be reinstated with back wages and service benefits".

11. Nowhere in the failure report the second party denied the categorical version of the first party that he worked under the second party from 1.8.1995 to 28.2.2001 continuously without any break, thereby crossing a period of more than 240 days in course 12 calendar months and that the second party passed the order of termination without following the procedure as laid down under section 25-F of the industrial Dispute Act, 1947.

12. The first party categorically alleges in his evidence that after retrenchment of the services of the first party, the second party has engaged a new daily rated employee for the same nature of work. But I am unable to accept such statement in as much as such an averment was not made in his statement of claim. But the unchallenged case and evidence of the first party go to establish that the act of the second party is in sheer violation of section 25F of the Industrial Disputes Act, 1947.

13. The court has also been called upon to adjudicate whether the Pradhan, Gram Panchayat is covered under the definition of employer under section 2(g) of the Industrial Disputes Act, under Sub-section (4) of Section 24 of the Andaman & Nicobar Islands (Panchayats) Regulation 1994, the Gram Panchayat may appoint such other officers and servants and in such number as may, from time to time, be necessary. Under the proviso to the said sub-section, the Gram Panchayat shall not create any post not already provided for in the budget except with the previous approval of the Administrator. Whether the Administrator or any competent authority has granted any previous approval for engagement of daily rated employees in the Gram Panchayat or not, is a fact which can be unfolded only by the second party. The first party is not expected to know whether his order of appointment was legally issued or not. One thing is very clear that the first party was engaged under the Gram Panchayat, his wages were duly paid and he was retrenched. It is only the second party who can highlight the entire administrative procedure, but unfortunately, the second party is willfully abstaining from the present proceeding. That the Pradhan did not contest the case is also of no consequence before this court. It is a matter between the Administrator and the Pradhan. The court goes by records produced before it. In an unreported judgement delivered by the Hon'ble High Court at Calcutta, Circuit Bench at Port Blair in CO No. 002 of 2002 on 18.12.2003, it has been observed, "Admittedly, section 24 sub-section (4) makes it clear that a Gram Panchayat has the authority to make appointment of its officers and servants from time to time as may be necessary. But this is restricted only with regard to the post already in existence or the posts created in respect of which budgetary provisions are already provided for. But that too with prior approval of the Administrator, without the prior approval of the Administrator, neither any post could be created nor any appointment could be given by the Pradhan".

14. In the case in our hand, the workman has not only stacked his claim in the statement of claim, but he has also supported his claim on oath before the witness box. His such testimony on oath remains unchallenged and unrebutted although the materials to challenge such testimony might be in the custody of the employer. Whatever might be the result, the employer having chosen not to produce those materials, this court is free to draw adverse inference against the employer. Whatever may be the case, in case a person is engaged even on daily rated basis and has worked for 240 days, in that event he is entitled to continue in such post in such manner as he was engaged until his service is legally terminated. We may recollect that the contesting parties in the present proceeding are the workman concerned and the Pradhan, Gram Panchayat. It is the same Pradhan, Gram Panchayat, who has engaged the workman on daily rated basis and allowed him to continue in service for long 5 years or more and it is the same Pradhan who has retrenched him from service and it is he who contended before the Conciliation Officer and raised an industrial dispute that he had no authority to act as an employer under section 2(g) of the Industrial Disputes Act and now he abstains from participating in the proceeding. This is really astonishing.

15. Coming to the crucial question whether the action of the second party in terminating the services of the first party is legal or justified, I have already observed that the first party has worked under the second party from 1.8.1995 to 28.2.2001 at a stretch and without any break. Thus it can be said that he has completed more than 240 days continuous service in course of 12 calendar months. Under section 25 of the Act, no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice, and the workman has been paid at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months, and notice in the prescribed manner is served on the appropriate Government. There is nothing on record to show that the second party has complied with the pre-requisites as mandated in section 25-F of the Industrial Disputes Act prior to the retrenchment of the first party from service. Therefore, on that ground, the retrenchment appears to be bad in law.

16. Having considered all these aspects, I am of the considered opinion that the action of the second party in retrenching the services of the first party from service with effect from 28.2.2001 is neither legal or justified. Consequently relying on the unreported judgement delivered by the Hon'ble High Court at Calcutta, Circuit Bench at Port Blair in CO No. 002 of 2002 on 18.12.2003 I hold that this court is unable to pass any award for reinstating the first party workman in service as Peon against regular scale of pay. He was a daily rated employee. He did not whisper anything either in his statement of claim or in his

evidence on affidavit that during all these years from the date of his retrenchment he remained unemployed. Upon conspectus of all this and applying the principles of "no pay for no work" I am of the opinion that the workman should not be extended the benefit of break wages from the date of his retrenchment till date, but he should be treated to be in continuous service for all service benefits as if there had not been any retrenchment.

Hence,

AWARDED

that the Gram Panchayat is an industry within the meaning of section 2(j) of the Industrial Disputes Act, 1947. With regard to schedule reference No. 2, it is held that the Pradhan, in the instant case, was competent to appoint the first party workman. The question whether Pradhan (who is an elected member for a fixed tenure) is competent to appoint daily rated mazdoor/daily rated typist without prior approval of the Director/Secretary of Panchayat, is kept open to be decided in appropriate case. With regard to scheduled reference No. 3, it is held that the Pradhan, so far as it relates to the instant reference, is covered under the definition of employer defined under section 2(g) of the ID Act, 1947. With regard to the scheduled reference No. 4 and 5, I make no comments as this issue is redundant in the present proceeding. With regard to scheduled reference No. 6, I hold that the action the Pradhan, Gram Panchayat, Sivapuram in terminating Shri R. Madanan from the post of daily rated Peon with effect from 28.2.2001 is neither legal nor justified. The said workman is entitled to be reinstated as daily rated peon with immediate effect. In view of my observations in the foregoing paragraphs, I am of the opinion that the first party workman is not entitled to back wages for the intervening period between retrenchment and this day, but he should be deemed to be in continuous service as if there had not been any retrenchment.

Let this Award be forwarded to the Lt. Governor (Administrator), Andaman & Nicobar Islands for favour of his information and due publication in the Official Gazette.

Given under my hand and seal of the court this day of 16th March, 2007.

Typed at my dictation and corrected by me.

Sd/-
P.O.

Sd/-
(N.K. Ghosal)
Presiding Officer,
Labour Court,
Andaman & Nicobar Islands.

By order of the Lieutenant Governor, A&N Islands.

Sd/-
(P.P. Sasidharan Nair)
Assistant Secretary (Labour)